

**INVITATION FOR BID  
FOR  
BAMBERG COUNTY OFFICE ON  
AGING, 498 LOG BRANCH RD.  
BAMBERG, SC 29003**

SEALED PROPOSALS WILL BE RECEIVED UNTIL 3:00PM ON  
**AUGUST 31, 2018 LOCAL TIME**

MAIL OR HANDCARRY BIDS TO:

BAMBERG COUNTY  
C/O THOMAS THOMAS  
P.O. BOX 149  
1234 NORTH ST.  
BAMBERG, SC 29003  
803-245-2377

IF THOMAS CANNOT BE REACHED, CALL KAY CLARY  
AT BAMBERG COUNTY OFFICE ON AGING  
803-245-3021 EXT. 223

BID TITLE: ROOFING SERVICES Project Number: 18-01 Award Date: September 6, 2018  
COMPLETION DATE: MUST BE COMPLETED 60 DAYS OF AWARD DATE

VENDOR NAME:

VENDOR MAILING ADDRESS:

AUTHORITY – STATE – ZIP

PHONE NUMBER:

AUTHORIZED SIGNATURE:

( ) -

FEDERAL ID OR SOCIAL SECURITY NUMBER:

LIST DUNS NUMBER: (REQUIRED)

( ) YES ( ) NO

I CERTIFY THAT THIS PROPOSAL IS MADE WITHOUT PRIOR UNDERSTANDING, AGREEMENT, OR CONNECTION WITH ANY CORPORATION, FIRM, OR PERSON SUBMITTING A PROPOSAL FOR THE SAME MATERIALS, SUPPLIES, OR EQUIPMENT, AND IS IN ALL RESPECTS FAIR & WITHOUT COLLUSION OR FRAUD. I AGREE TO ABIDE BY ALL CONDITIONS AND FEDERAL CLAUSES OF THIS PROPOSAL. I CERTIFY THAT I AM AUTHORIZED TO SIGN THIS PROPOSAL FOR THE PROPOSER.

IS VENDOR REGISTERED ON SYSTEM FOR AWARD MANAGEMENT  
(S.A.M.) - {Vendor Must Be Registered on S.A.M.}  
[WWW.SAM.GOV](http://WWW.SAM.GOV)

AUTHORIZED SIGNATURE

TITLE

DATE

IF A STATEMENT OF AWARD IS DESIRED, PLEASE ENCLOSE A SELF ADDRESSED STAMPED ENVELOPE

**INVITATION FOR BIDS**  
**BAMBERG OFFICE ON AGING**

*AUGUST 3, 2018*

**PROJECT SCOPE:**

Bamberg County is soliciting bids for roofing replacement at the Bamberg County Office on Aging, located at 498 Log Branch Rd, Bamberg, SC 29003. Scope of work includes removal and replacement of existing shingles with 30 year architectural shingles, installing 15# felt paper and new ridge vent, replacing pipe flashing and hauling off debris. For additional information contact Thomas Thomas, Deputy Admin at 803-928-4610 or contact Kay Clary, Ex. Director at 803-2453021 EXT223

Program fraud and false or fraudulent statements and related Acts

Access to Records
Federal Changes
Civil Rights (EEO, Title VI, & ADA)
Termination Provisions
Disadvantaged Business Enterprises (DBEs)
Incorporation of FTA Terms
Debarment and Suspension
Buy America

## FEDERALLY REQUIRED CONTRACT CLAUSES

### APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over \$2,500)

CLAUSES	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Program fraud and false or fraudulent statements and related Acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal Changes	All	All	All	All	All
Civil Rights (EEO, Title VI, & ADA)	All	All	All	All	All
Termination Provisions	All	All	All	All	All
Disadvantaged Business Enterprises (DBEs)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	All	All	All	All	All
Buy America	≥ \$25,000	≥ \$25,000	≥ \$25,000	≥ \$25,000	≥ \$25,000
Provisions for resolution of disputes, breaches, or other litigation			>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,500 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyrights Requirements	Research & Development				
Energy Conservation	All	All	All	All	All



Recycled Products		Contracts for Items Designated by EPA, when procuring \$10,000 or more per year		Contracts for Items Designated by EPA, when procuring \$10,000 or more per year	Contracts for Items Designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	All
Notification of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

## FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES

### FEDERAL TRANSIT ADMINISTRATION

#### **BEST PRACTICES PROCUREMENT MANUAL<sup>1</sup>**

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'The manual can be accessed using the following url:

[http://www.fta.dot.gov/12831\\_6195.html](http://www.fta.dot.gov/12831_6195.html)

## Appendix A

Signed copies of the Certification Regarding Debarment and Other Responsibility Matters must be included in the proposal package.

### Certification Regarding Debarment & Other Responsibility Matters

By submitting a proposal, Offeror certifies, to the best of its knowledge and belief, that -

(i) Offeror and/or any of its Principals -

- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
- (B) Have not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission or any of the offenses enumerated in paragraph (i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

- (A) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
- (B) Offeror will provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (C) If Offeror is unable to certify the representations stated in paragraphs (i), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror non-responsible.
- (D) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (E) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to The Coast RTA, the Procurement Officer may terminate the contract resulting from this solicitation for default.

\_\_\_\_\_  
Authorized Signature of Proposer

\_\_\_\_\_  
Date



## Appendix B

(To Be Completed By Offeror and Also Must Be Notarized)

### CERTIFICATION OF NON-COLLUSION

By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

3. The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any other matter relating to such prices with any other Proposer or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competition; and,
3. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purposes of restricting competition.

Dated: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTARY: (Must Be Notarized)

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ My commission expires \_\_\_\_\_, 20\_\_\_\_.

## Appendix C

(To Be Completed by Offeror)

### CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_, hereby certify on behalf  
(Name and title of company official)

of \_\_\_\_\_ that:  
(Name of company)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signed by: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

**Appendix D**

**(To Be Completed by Offeror)**

**VERIFICATION OF RECEIPT OF AMENDMENTS IF APPLICABLE**

Receipt of Amendment (if any) – Please sign, verifying receipt of all amendments.

Verify with procurement officer to ensure that all amendments have been received prior to signing.

1. \_\_\_\_\_  
Authorized Signature
2. \_\_\_\_\_  
Authorized Signature
3. \_\_\_\_\_  
Authorized Signature

The undersigned of this form as Offeror, upon receipt of contract acceptance hereby agrees to furnish the above items to Coast RTA in accordance with all the instructions that have been carefully reviewed and examined by the Offeror. The Offeror has submitted this proposal with the understanding that the acceptance in writing by Coast RTA of this offer to furnish the services described herein shall constitute a contract between the Offeror and Coast RTA which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with the terms and conditions as set forth in the Invitation for Bid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date



## Appendix E

### CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS

(A) By submitting an offer, the offeror certifies that

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to:
  - (i) Those prices;
  - (ii) The intention to submit an offer; or
  - (iii) The methods or factors used to calculate the prices offered.
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(B) Each signature on the offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
- (2) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal;
- (3) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and
- (4) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.
- (5) If the offeror deletes or modifies paragraph (A)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Dated: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_



Appendix F  
Cost Proposal

Year 1 \_\_\_\_\_ per employee

Year 2 \_\_\_\_\_ per employee

Year 3 (Option 1) \_\_\_\_\_ per employee

Year 4 (Option 2) \_\_\_\_\_ per employee

Year 5 (Option3) \_\_\_\_\_ per employee

Other Pricing Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Appendix G

This is to alert you to the requirements of the Iran Divestment Act of 2014. On January 5, 2015, the South Carolina State Budget and Control Board, pursuant to S.C. Code Ann. 11-57-310(A)(1), published a list of persons engaged in investment activities in Iran. The list is available at the following URL:

<http://procurement.sc.gov/PS/PS-iran-divestment.phtml>

Section 11-57-310 (B) declares that any person identified on the Iran Divestment Act List is ineligible to contract with the State, as well as Waccamaw Regional Transportation Authority DBA The Coast RTA. Section 11-57-310 (C) provides "Any contract entered into with a person that is ineligible to contract with the State or Waccamaw Regional Transportation Authority DBA The Coast RTA shall be void ab initio." Section 11-57-330(A) provides:

A state agency or entity (Waccamaw Regional Transportation Authority DBA The Coast RTA) shall require a person that attempts to contract with the State, including a contract renewal or assumption, to certify, at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or the assignee is not identified on a list created pursuant to Section 11-57-310. A state agency (including Waccamaw Regional Transportation Authority DBA The Coast RTA) shall include certification information in the procurement record.

Section 11-57-330(B) prohibits any State or Waccamaw Regional Transportation Authority DBA The Coast RTA contractor from utilizing any subcontractor identified on the Iran Divestment Act List. You may read the entire act at the following URL:

<http://www.scstatehouse.gov/code/t11c057.php>

In the meantime we have developed two new solicitation clauses, and revised a third clause, for use beginning immediately.

The first new clause creates the bidder's certification he is not on the list. It is part of instructions to offerors, and must be added by amendment to all solicitations that have not yet been opened. The clause reads:

### IRAN DIVESTMENT ACT- CERTIFICATION

(a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL:

<http://procurement.sc.gov/PS/PS-irandivestment.phtml>

Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State (Waccamaw Regional Transportation Authority DBA The Coast RTA) to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List.

For solicitations that have been opened but not awarded, the successful offeror must execute a separate certification prior to award. A form for this certification is attached.

The second new clause (1) creates a duty to advise the buyer if, after award but before a renewal, a contractor is added to the list; and (2) prohibits subcontracting with persons on the list. It must be added to all open solicitations by amendment; and to solicitations that have been opened but have not yet been awarded and to any current contracts that have renewable option terms remaining, by change order or directive. It is part of the performance requirements of the contract, and appears in Section VIIA. The clause reads:

IRAN DIVESTMENT ACT - ONGOING OBLIGATIONS- (JAN 2015): (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List.

The final clause pertains to all open solicitations; to all contracts awarded or to be awarded pursuant to solicitations that did not include the clause; and to all current contracts, where the contract term includes renewal options. The revised clause reads:

**TERM OF CONTRACT - OPTION TO RENEW:**

- (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the State (Waccamaw Regional Transportation Authority DBA The Coast RTA) elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.
- (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio.

**IRAN DIVESTMENT ACT OF 2014**

The Iran Divestment Act List is a list published by the South Carolina State Fiscal Accountability Authority pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you.

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor identified below, and, as of the date of my signature, the vendor identified below is not on the current Iran Divestment Act List. I further certify that I will notify the Procurement Officer immediately if, at any time before award of a contract, the vendor identified below is added to the Iran Divestment Act List.

\_\_\_\_\_  
Vendor Printed Name

\_\_\_\_\_  
By (Authorized Signature)

\_\_\_\_\_  
Printed Name and Title of Individual Signing

\_\_\_\_\_  
Date Executed



## Appendix H

### REQUIRED CLAUSES

1. **Fly America Requirements** - The contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, which state that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.
2. **Energy Conservation** - The contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state's energy conservation plan issued in compliance with the Energy Policy & Conservation Act.
3. **Clean Water** - The contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The contractor shall report each violation to WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and understands and agrees that WACCAMAW REGIONAL TRANSPORTATION AUTHORITY will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.
4. **Access to Records** - The following access to records requirements apply to this Contract:
  1. Where the purchaser is not a State, but a local government, and is the FTA recipient or subgrantee of the FTA recipient in accordance with 49 CFR 18.36(i), the contractor shall provide purchaser, FTA Administrator, the US Comptroller General or their authorized representatives access to any contractor's books, documents, papers and records which are directly pertinent to the contract for the purpose of making audits, examinations, excerpts and transcriptions. The contractor shall also, pursuant to 49 CFR 633.17, provide FTA Administrator or his authorized representative including any PMO contractor access to contractor's records and construction sites pertaining to any major capital project, defined at 49 USC 5302(a)1, which is receiving federal assistance through the programs described at 49 USC 5307, 5309 or 5311.
  2. Where the purchaser is a FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
  3. Where purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is FTA recipient or subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, FTA Administrator, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
  4. Where purchaser is FTA recipient or subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive



bidding, the contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The contractor shall maintain all books, records, accounts and reports required under the contract for no less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the purchaser, FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

8. Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between THE COAST RTA and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

8. Clean Air -

(1) The contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 *et seq.* The contractor shall report each violation to WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and understands and agrees that WACCAMAW REGIONAL TRANSPORTATION AUTHORITY will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

(2) The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. Recovered Materials - The contractor shall comply with all requirements of Sec. 6002 of the Resource Conservation & Recovery Act, as amended (42 USC 6962, including the regulatory provisions of 40 CFR 247, and Executive Order 12873, as applied to the procurement of items designated in 40 CFR 247(b).

10. No Obligation by the Federal Government -

(1) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and the contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor shall include the above clause in each subcontract financed in whole or in part with FTA assistance. The clause shall not be modified, except to identify the subcontractor which is subject to its provisions.

11. Program Fraud and False or Fraudulent Statements or Related Acts -

(1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to



its actions pertaining to this project. Upon execution of the underlying contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

(2) If the contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 12. Termination

a. Termination for Convenience (General Provision) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to grantee to be paid the Contractor. If the contractor has any WACCAMAW REGIONAL TRANSPORTATION AUTHORITY property in its possession, the contractor will account for the same, and dispose of it in the manner WACCAMAW REGIONAL TRANSPORTATION AUTHORITY directs.

b. Termination for Default [Breach or Cause] (General Provision) If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by WACCAMAW REGIONAL TRANSPORTATION AUTHORITY that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY in its sole discretion may, in the case of a termination for breach or default, allow the contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to grantee's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by contractor or written notice from grantee setting forth the nature of said breach or default, grantee shall have the right to terminate the Contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude grantee from also pursuing all available remedies against contractor and its sureties for said breach or default.



d. Waiver of Remedies for any Breach In the event that grantee elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by grantee shall not limit grantee's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract for default. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the recipient.

g. Termination for Default (Transportation Services) If the contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract for default. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall terminate by delivering to the contractor a Notice of Termination specifying the nature of default. The contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the contractor has possession of Recipient goods, the contractor shall, upon direction of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, protect and preserve the goods until surrendered to the Recipient or its agent. The contractor and grantee shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY.

h. Termination for Default (Construction) If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract for default. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and



2. the contractor, within [10] days from the beginning of any delay, notifies WACCAMAW REGIONAL TRANSPORTATION AUTHORITY in writing of the causes of delay. If in the judgment of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, the delay is excusable, the time for completing the work shall be extended. The judgment of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect & Engineering) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the contractor to fulfill the contract obligations. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may terminate this contract, or any portion of it, by serving a notice of termination on the contractor. The notice shall state whether the termination is for convenience of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY or for the default of the contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The contractor shall account for any property in its possession paid for from funds received from WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, or property supplied to the contractor by WACCAMAW REGIONAL TRANSPORTATION AUTHORITY. If the termination is for default, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The contractor shall promptly submit its termination claim to WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and the parties shall negotiate the termination settlement to be paid the contractor.

If the termination is for the convenience of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, the contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY determines that the contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, after setting up a new work schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

### 13. Certification Regarding, Suspension, and Other Responsibility Matters Lower Tier Covered Transactions (Third



Party Contracts over \$25,000).

#### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, grantee may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to grantee if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR 29].
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by grantee.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by US General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Para. 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, grantee may pursue available remedies including suspension and/or debarment.

#### **"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

(1) The prospective lower tier participant certifies, by submittal of this proposal, that neither it nor its "principals" [as defined at 49 CFR 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or



voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**14. Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The contractor shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552a. Among other things, the contractor shall obtain the express consent of the Federal Government before the contractor or its employees operate a system of records on behalf of the Federal Government. The contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The contractor shall also include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with FTA assistance.

**15. Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (ADA) of 1990, 42 USC 12132, & 49 USC 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, the contractor shall comply with all applicable equal employment opportunity requirements of USDOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and 49 USC 5332, the contractor shall refrain from discrimination against present and prospective employees for reason of age. The contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, the contractor shall comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. The contractor shall also comply with any implementing requirements FTA may issue.

(3) The contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.



## 16. Patent and Rights Data

**A. Rights in Data** - The following requirements apply to contracts involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software; engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY or contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the purchaser or contractor authorize others to do so, without the written consent of the US Government, until such time as the US Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 CFR 18.34 and 49 CFR 19.36, the US Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "US Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for US Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the US Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the purchaser or contractor using FTA assistance in whole or in part.

(c) When FTA awards assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the purchaser and the contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the US Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the purchaser or contractor's use whose costs are financed in whole or in part with FTA assistance provided for transportation capital projects.

(d) Unless prohibited by state law, upon request by the US Government, the purchaser and the contractor agree to indemnify, save, and hold harmless the US Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the purchaser or contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the purchaser nor the contractor shall be required to indemnify the US Government for any such liability arising out of the wrongful act of any employee, official, or agent of the US Government.



(e) Nothing contained in this clause on rights in data shall imply a license to the US Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the purchaser or contractor and financed entirely without using Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the purchaser or contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in US Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR 401.

(4) The contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA assistance.

**B. Patent Rights** - These requirements apply to each contract involving experimental, developmental, or research work:

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the US or any foreign country, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and the contractor shall provide immediate notice and a detailed report to the FTA.

(2) Unless the US Government later makes a contrary determination in writing, irrespective of the contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the purchaser and the contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the US Government as described in US Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts & Cooperative Agreements," 37 CFR 401.

(3) The contractor shall include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA assistance.

**17. Disadvantaged Business Enterprise (DBE) 49 CFR 26 -**

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in USDOT Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY's overall goal for DBE participation is 1%. A separate contract goal has not been established for this procurement.

(b) The contractor, subgrantee or subcontractor shall not discriminate on the basis of race, color, national origin,



or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of this contract. The contractor's failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WACCAMAW REGIONAL TRANSPORTATION AUTHORITY deems appropriate. Each subcontract shall include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) Proposers shall document sufficient DBE participation to meet WACCAMAW REGIONAL TRANSPORTATION AUTHORITY's goals or, alternatively, shall document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

(d) The contractor shall pay all subcontractors performing work related to the contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from WACCAMAW REGIONAL TRANSPORTATION AUTHORITY. In addition, the contractor shall return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. If the contract involves incremental retainage payments, the contractor shall return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and contractor's receipt of the partial retainage payment related to the subcontractor's work.

(e) The contractor shall notify WACCAMAW REGIONAL TRANSPORTATION AUTHORITY within five (5) business days, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY.

- 18. State & Local Law Disclaimer** - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on State law, and that before the suggested clauses are used in the contractor's procurement documents, the contractor should consult its attorney.
- 19. Incorporation of FTA Terms** - The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause WACCAMAW REGIONAL TRANSPORTATION AUTHORITY to be in violation of FTA terms and conditions.
- 20. Prohibition Against Exclusionary or Discriminatory Specifications** - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.
- 21. Access Requirements for Persons with Disabilities** - The contractor shall comply with the requirements of 49 USC 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.
- 22. Notification of Federal Participation** - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000



or more, the contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**23. Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**24. Equal Employment Opportunity (EEO) & Fair Employment Practices** - During the performance of this contract, the contractor agrees as follows:

The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, marital status, disability, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, marital status, disability, sex, or national origin. Such action shall include, but not be limited to the following employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or training, including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The contractor shall comply with Executive Order 11246, and unless otherwise exempt under the rules, regulations, subject to EEO requirements as set forth in FPR 1-12.803.2, said clause being herewith incorporated into this contract by reference. In support of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY's EEO Contract Compliance Requirements, all proposals shall be accompanied by the following executed documents.

- (1) Affidavit of Non-Discrimination
- (2) Employer Information Report (EEO-1)
- (3) Bidder/Proposer Policy Statement on Equal Employment
- (4) Affirmative Action Questionnaire

The contractor for itself, its assignees and successors in interest agrees as follows:

**Compliance Requirements** - The contractor shall comply with the Regulations relative to non-discrimination in Federally-assisted programs of USDOT, 49 CFR 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**Non-Discrimination** - During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of, the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, marital status, disability, sex, or national origin.
- (2) The contractor shall send to each labor union or representative or workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (3) The contractor shall furnish all information and reports required by Executive Order 11246, and by rules, regulations, and orders of the USDOL for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (4) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further federally-assisted contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by USDOL rule, regulations, or order, or as otherwise provided by law.



(5) The contractor shall include the portion of the sentence immediately preceding para. (1) and the provisions of para. (1) through (6) in every subcontract or purchase order unless exempted by USDOL rules, regulations or orders issued pursuant to Sec. 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor.

(6) The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the US Government to enter into such litigation to protect the interest of the United States.

**Incorporation of Provisions** - The contractor shall include the provisions of para. (1-8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by regulation, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as WACCAMAW REGIONAL TRANSPORTATION AUTHORITY or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request WACCAMAW REGIONAL TRANSPORTATION AUTHORITY to enter into such litigation to protect the interests of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and, in addition, the contractor may request the US Government to enter into such litigation to protect the interests of the United States.

- 25. Affirmative Action/Equal Employment Opportunity Policy & Requirements** It is the policy of WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and the USDOT that disadvantaged business enterprises, as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR 26 apply to this agreement.

**DBE Obligation** WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and its contractors shall ensure that DBEs as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantage business enterprises have the maximum opportunity to compete for and perform contracts. WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall not discriminate on the basis of race, color, religion, marital status, disability, age, national origin, or sex in the award and performance of USDOT-assisted contracts.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees as follows:

- a. **Compliance with Regulations:** The contractor shall comply with the regulations relative to non-discrimination in federally-assisted programs of the USDOT, 49 CFR 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to non-discrimination on the grounds of race, color, sex, marital status, disability, age, or national origin.

**Equal Employment Opportunity** In connection with the execution of this contract, the contractor shall ensure



that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, marital status, age, disability, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, training, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation and selection of training, including apprenticeship.

**Disadvantaged Business Enterprise (DBE)** In connection with the performance of this contract, the contractor will cooperate with WACCAMAW REGIONAL TRANSPORTATION AUTHORITY in meeting its commitments and goals with regard to the maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontracts under this contract. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as WACCAMAW REGIONAL TRANSPORTATION AUTHORITY deems appropriate.

WACCAMAW REGIONAL TRANSPORTATION AUTHORITY, in accordance with 49 CFR 26, Title VI of the Civil Rights Act of 1964 and 49 CFR 21, non-discrimination in Federally-assisted programs issued pursuant to such Act, and Sec. 105 (F) of the Surface Transportation Assistance Act of 1982 and Sec. 10g (c) of the Surface Transportation & Uniform Relocation Assistance Act (STURAA) of 1987, hereby notifies all bidders that it shall affirmatively ensure that DBE's will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color, sex, national origin, marital status, religion, or age in consideration for an award.

**Termination** A prime contractor shall not terminate a DBE subcontractor for convenience and then perform the work with its own forces or its affiliate's.

**Prompt Payment** Contractor agrees to pay each subcontractor and supplier under this contract for satisfactory performance of its contract no later than thirty (30) calendar days from the date the contractor receives payment from WACCAMAW REGIONAL TRANSPORTATION AUTHORITY. Contractor further agrees to return retainage payments to each subcontractor within thirty (30) calendar days from the date of the satisfactory completion of the subcontractor's work. Any delay or postponement of payment may occur only for good cause following WACCAMAW REGIONAL TRANSPORTATION AUTHORITY's written approval. This clause applies to both DBE and non-DBE subcontractors.

**26. Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally financed and assisted contracts shall not be eligible to act as a subcontractor for the contractor pursuant to this contract. If the contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, WACCAMAW REGIONAL TRANSPORTATION AUTHORITY shall cancel, terminate or suspend this contract.

**27. Compliance With Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions:

All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1E, "Third Party Contracting Requirements," dated June 19, 2003, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause WACCAMAW REGIONAL TRANSPORTATION AUTHORITY to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement. Contractor's failure to so comply shall constitute a material breach of this contract.



This is to alert you to the requirements of the Iran Divestment Act of 2014. On January 5, 2015, the South Carolina State Budget and Control Board, pursuant to S.C. Code Ann. 11-57-310(A)(I), published a list of persons engaged in investment activities in Iran. The list is available at the following URL:

<http://procurement.sc.gov/PS/PS-iran-divestment.phtml>

Section 11-57-310 (B) declares that any person identified on the Iran Divestment Act List is ineligible to contract with the State, as well as Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority. Section 11-57-31 O(C) provides "Any contract entered into with a person that is ineligible to contract with the State or Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority shall be void ab initio." Section 11-57- 330(A) provides:

A state agency or entity (Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority) shall require a person that attempts to contract with the State, including a contract renewal or assumption, to certify, at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or the assignee is not identified on a list created pursuant to Section 11-57-310. A state agency (including Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority) shall include certification information in the procurement record.

Section 11-57-330(B) prohibits any State or Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority contractor from utilizing any subcontractor identified on the Iran Divestment Act List. You may read the entire act at the following URL:

<http://www.scstatehouse.gov/code/t11c057.php>

In the meantime we have developed two new solicitation clauses, and revised a third clause, for use beginning immediately.

The first new clause creates the bidder's certification he is not on the list. It is part of instructions to offerors, and must be added by amendment to all solicitations that have not yet been opened. The clause reads:

**IRAN DIVESTMENT ACT- CERTIFICATION**

(a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL:

<http://procurement.sc.gov/PS/PS-irandivestment.phtml>

Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State (Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority) to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List.

For solicitations that have been opened but not awarded, the successful offeror must execute a separate certification prior to award. A form for this certification is attached.

The second new clause (I) creates a duty to advise the buyer if, after award but before a renewal, a contractor is added to the list; and (2) prohibits subcontracting with persons on the list. It must be added to all open solicitations by amendment; and to solicitations that have been opened but have not yet been awarded and to any current contracts that have renewable option terms remaining, by change order or directive. It is part of the performance requirements of the contract, and appears in Section VIIA. The clause reads:

IRAN DIVESTMENT ACT - ONGOING OBLIGATIONS- (JAN 2015): (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List.

The final clause pertains to all open solicitations; to all contracts awarded or to be awarded pursuant to solicitations that did not include the clause; and to all current contracts, where the contract term includes renewal options. The revised clause reads:

**TERM OF CONTRACT - OPTION TO RENEW:**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the State (Waccamaw Regional Transportation Authority DBA Waccamaw Regional Transportation Authority) elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

(b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio.



## **IRAN DIVESTMENT ACT OF 2014**

The Iran Divestment Act List is a list published by the South Carolina State Fiscal Accountability Authority pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you.

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor identified below, and, as of the date of my signature, the vendor identified below is not on the current Iran Divestment Act List. I further certify that I will notify the Procurement Officer immediately if, at any time before award of a contract, the vendor identified below is added to the Iran Divestment Act List.

\_\_\_\_\_  
Vendor Printed Name

\_\_\_\_\_  
By (Authorized Signature)

\_\_\_\_\_  
Printed Name and Title of Individual Signing

\_\_\_\_\_  
Date Executed